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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/036,573	12/31/2001	Robert L. Popp	KCC 4770 (K.C. NO. 17,310	4042
321	7590	02/22/2005	EXAMINER	
SENNIGER POWERS LEAVITT AND ROEDEL ONE METROPOLITAN SQUARE 16TH FLOOR ST LOUIS, MO 63102			REICHLE, KARIN M	
			ART UNIT	PAPER NUMBER
			3761	

DATE MAILED: 02/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/036,573	<b>Applicant(s)</b> POPP ET AL.	
	<b>Examiner</b> Karin M. Reichle	<b>Art Unit</b> 3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 13 December 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 2-5,8,9,11,14,16,17,20,21,28,30,31,33-37 and 40-43 is/are pending in the application.
- 4a) Of the above claim(s) 2,4,5,8,11,14,16,17,20 and 21 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 3,9,28,30,31,33-37 and 40-43 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 December 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>12/04 and 1/05</u> . | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Continued Examination Under 37 CFR 1.114*

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 12-13-04 has been entered.

### *Election/Restrictions*

2. Claims 2, 4-5, 8, 11, 14, 16-17, and 20-21 remain withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention and species, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 6.

***Specification***

3. It is noted that the amendments to page 5, line 24 and page 27, line 8 do not comply with 37 CFR 1.121, effective 7-30-03, i.e. include new paragraphs which are underlined, and thus such amendments are not entered. Compliant new paragraphs should be submitted with any further response if Applicant desires such to be entered.

***Drawings***

4. The drawings were received on 12-13-04. These drawings are not accepted by the Examiner. Figures 8 and 9 do not show the “oriented” web material as claimed, as best understood, see discussion infra.

5. The drawings are objected to because in Figure 2, upper left hand corner, there should be a line from 66 to the structure it denotes. Where are Figures 8 and 9? A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

6. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the invention as claimed in claims 3, 9 and 28, 30-31, 33-37 and 40-43, as best understood, see discussion infra, e.g. oriented nonwoven loop material, the web being in the extended position on the substrate, the web being in a relaxed configuration, must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

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A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

***Description***

7. The disclosure is objected to because of the following informalities: in Figure 3, what is 78? In the claims, the description, e.g. the Summary of the Invention section, page 6, lines 25-27, page 9, lines 16-18, the paragraph bridging pages 23-24, lines 1-6 thereof, the amendment to page 27, line 8, lines 1-27 an d31 et seq, and page 29, line 29-page 31, line 2, and the abstract, it is described that the first fastening component is an oriented nonwoven loop material comprising an extensible oriented nonwoven web. As defined at page 9, lines 16-18 referred to supra "oriented material" refers to a material or web in which mechanical drawing of the material has resulted in alignment of the fibers constituting the material, i.e. all the fibers, in a direction generally parallel to the direction of the applied force (it is noted that "generally" has been interpreted by the courts as not allowing negation of the term it modifies or, in other words, "generally parallel" allows for irregular deviations from perfectly parallel but does not broaden "parallel" to encompass non parallel, see *Arvin Industries v. Berns Air King Corp.*, 525 F.2d 182, and "draw" is given its usual meaning since such has not been specifically defined and is defined by the dictionary as "to cause to move after or toward one by applying continuous force, pull, drag", i.e. stretch). As defined at page 6, lines 25-27 referred to supra "extensible" is the capability to stretch or be elongated in at least one direction, but which may not have sufficient recovery to be considered elastic. Yet also in the claims, the description as now amended at page 27, line 8, lines 28-30, page 28, lines 21-23 and the abstract, it is described that the web is

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extensible from a relaxed configuration to an extended configuration wherein in the extended configuration a greater number of fibers of the nonwoven web are oriented in the direction in which the web is extended than in the relaxed configuration and the web being in its extended configuration on the substrate. Since this description only requires the majority of the fibers to be aligned in a direction rather than all the fibers be aligned generally parallel in a direction, at best the descriptions appear to be inconsistent. Furthermore, it is unclear whether the amendments are directed to a description of the process of drawing to arrive at the oriented nonwoven material and web or whether they recite structure of the loop material in addition to that already cited. If the former, such would appear to be redundant with the definition provided of "extensible" and "oriented material". If the latter, it is unclear exactly what is being described? A drawn material with the fibers aligned generally parallel, i.e. the relaxed configuration?, which is further extended in some direction to an extended configuration in which more of the fibers are oriented in that direction than in the relaxed configuration? Is the web in its extended configuration all the time on the substrate to which it is secured? Just when it is secured? A clear, consistent description of the nonwoven loop material and nonwoven web should be set forth, e.g. how is the web made? What is its structure of the web after manufacture but before securement to the substrate? How is it secured? What is the web's structure upon securement to the substrate? What is the structure of the loop material after manufacture, i.e. what is the end product? It is noted that the lack of clarity with regard to the definition of the structure of "oriented" material is exacerbated by the addition of claims 40-43 which explicitly adds the material as being drawn or forcibly "oriented" because the definition of claim term

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“oriented” as set forth at page 9, lines 16-18 includes drawing or subjecting to application of force already and thus already implicitly sets forth such.

Appropriate correction is required.

### ***Claim Objections***

8. Claims 35 and 40-43 are objected to because of the following informalities: in claim 40, line 3, the terminology “drawn” appears to be redundant with the terminology “oriented”, see discussion supra, i.e. “oriented” is defined as “drawn”. This also applies to the terminology “forcibly” with regard to the terminology “oriented” in claim 42. In claim 35, “in combination with the article” on line 2 should be deleted as redundant. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

9. Claims 3, 9, 28, 30-31, 33-37 and 40-43 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In regard to claims 28, 33, 40 and 42 and thereby the claims dependent therefrom, and as discussed supra, the description of the first fastening component is unclear, e.g. what number of fibers at a minimum are required to be oriented in a specific manner and what is the manner required and at what time does such orientation exist?

***Claim Language Interpretation***

10. Due to the lack of clarity discussed supra and as best understood, the first fastening component of claims 3, 9 and 28, 30-31 and 33-37 will be considered an oriented nonwoven loop material secured to a substrate which comprises an extensible, nonwoven web of fibers with “oriented material” and “extensible” being defined as explicitly set forth on pages 6 and 9, respectively, “generally parallel” and “drawing” being defined as set forth supra and considering MPEP 2113, i.e. the patentability of a product by process is based on the product itself not the method of production (Therefore if the end product in the product by process is the same as or obvious from a product of the prior art, the product does not distinguish over the prior art even though the prior product was made by a different process), or in other words, the first fastening component is a nonwoven loop material comprising a nonwoven web of fibers having pulled or stretched generally parallel fibers (i.e. the resultant web produced from a nonwoven web of fibers capable of stretch or elongation in at least one direction but which may not have sufficient recovery to be considered elastic which was mechanically drawn, i.e. pulled or stretched, so that the fibers of the web are aligned generally parallel in the direction of draw) which nonwoven web of pulled or stretched generally parallel fibers is attached to a substrate. In claim 34, “generally free...gathering” is interpreted as allowing for irregular deviations from “free from substantial necking or gathering” but does not broaden such to encompass substantial necking or gathering. Claim 30 due to the lack of clarity discussed supra is interpreted as claiming a substrate integral with an article. Claim 35 is interpreted to claim the substrate integrally with just the one article of claim 33. The terminology of claims 40-43 which is similar to that of claims 3, 9 and 28, 30-31, and 33-37 will be interpreted the same as discussed supra. It is noted



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these claims do not require “extensibility” as defined or a substrate, and thus being in an extended configuration while on such substrate and any article combined therewith.

***Claim Rejections - 35 USC § 102/103***

11. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

12. Claims 3, 9, 28, 30-31, 33-37 and 40-43 are rejected under 35 U.S.C. 102(b) as being anticipated by, or in the alternative, under 35 USC 103(a) as obvious over Procter & Gamble, EP ‘198.

Claim 28: See Figures 1-3, 10, col. 3, lines 4-18, col. 4, lines 4-14 and 26-45, col. 5, lines 4-21 and 45-53, col. 6, lines 2-6, and 14-39 (“tension” according to its usual definition, i.e. ‘198 does not specifically define such, is “the act or process of stretching”, “a force tending to stretch or elongate something”, and “may” infers “may not” also), col. 8, lines 14-15, col. 9, lines 10-17 and lines 21-42, col. 13, lines 25-30, col. 14, lines 30-36 and col. 15, lines 29-41, i.e. the mechanical fastening system is 50 and has a first fastening component 20 of oriented nonwoven loop material 30 attached to a substrate, e.g., 22 and a second fastening component 52 of hook material. The fastening components are refastenable. The oriented nonwoven loop material can be a nonwoven web of fibers having generally parallel, tensioned, i.e. stretched, i.e. capable of stretch, i.e. of “extensible” material, fibers. This claim as interpreted includes a product by process. The patentability of such claim is based on the product itself not the method of production. Therefore if the end product in the product by process claim is the same as or obvious from a product of the prior art, the claim does not distinguish over the prior art even

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though the prior product was made by a different process. See MPEP 2113. Also see the Claim Language Interpretation section *supra*. The end product, as best understood, is the same as or obvious from the product of '198, see cited portions *supra*. Claim 3: see Figure 1, col. 5, lines 4-21, i.e. at least one axis, i.e. axes are MD and CD and col. 6, lines 2-5. Claim 9: see col. 8, lines 30-31. Claim 34: see portions cited *supra*, i.e. fibers are essentially parallel and can be tensioned without dislocation, disarrangement, skewing, etc., i.e. the nonwoven web is free from substantial necking and gathering. It is noted that the claim does not set forth when such freedom exists, i.e. before attachment, after attachment, before drawing, etc. Claim 30: it is noted that "integrally" does not require monolithic formation. See col. 14, line 50-col. 15, line 4. Claim 31: see col. 12, last line-col. 13, line 3. It is noted that the claim does not require direct attachment to the inelastic substrate. Claims 33-37: see discussion of claims 3, 9, 28, 30-31 and 34 *supra* and col. 14, line 50-col. 15, line 4. Claims 40-43: see discussion of claims *supra*.

13. Claims 3, 9 and 28, 30-31, 33-37 and 40-43 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Procter & Gamble PCT '893.

Claim 28: See Figures 1-8, page 4, lines 12 et seq, page 6, lines 4-7, page 7, lines 9-10, 13-15 and 21-23, page 8, lines 1-19, page 12, line 9, page 13, lines 1-3, page 15, lines 13 et seq, ("tension" according to its usual definition, i.e. '893 does not specifically define such, is "the act or process of stretching", "a force tending to stretch or elongate something", and "may" infers "may not" also), i.e. the mechanical fastening system is 20 and has a first fastening component 22 of oriented nonwoven loop material 30 attached to a substrate, e.g., 34 and a second fastening component 24 of hook material 28. The fastening components are refastenable. This claim as

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interpreted includes a product by process. The patentability of such claim is based on the product itself not the method of production. Therefore if the end product in the product by process claim is the same as or obvious from a product of the prior art, the claim does not distinguish over the prior art even though the prior product was made by a different process. See MPEP 2113. Also see the Claim Language Interpretation section *supra*. The end product, as best understood, is the same as or obvious from the product of '893, see cited portions *supra*.

Claim 3: see page 8, lines 1-7, page 15, lines 23 et seq, and page 19, lines 9-15. Therefore since the '893 device can include filaments 36 positioned in any direction, which includes a machine direction of the web, the '893 device is considered to meet the language of the claims. Claim 9: see page 13, lines 1-3. Claim 34: see portions cited *supra*, i.e. fibers are essentially parallel and can be tensioned without dislocation, disarrangement, skewing, etc., i.e. the nonwoven web is free from substantial necking and gathering. It is noted that the claim does not set forth when such freedom exists, i.e. before attachment, after attachment, before drawing, etc. Claim 30: it is noted that "integrally" does not require monolithic formation. See page 18, lines 28-33. Claim 31: see page 10, lines 7-10 and page 26, lines 24-26, i.e. the second lamina 80 is inelastic and if attached to composite 90 when it is completely relaxed, the composite 90 is inelastic. It is noted that the claim does not require direct attachment to the inelastic substrate. Claims 33-37: see discussion of claims 3, 9, 28, 30-31 and 34 *supra*, and page 18, lines 28-33. Claims 40-43: see discussion of claims *supra*.

***Response to Arguments***

14. Applicants remarks with regard to form have been considered but are either deemed moot in that the issue has not been reraised or is deemed not persuasive for the reasons already set forth supra. Specifically, it is noted that for the reasons set forth in paragraph 7, page 9, lines 16-18 and page 27, line 8-page 28, line 20 as originally filed are not considered to provide support for at least Figure 9b as argued by Applicant. Also Applicant's remarks regarding the term "oriented material" are not consistent with the explicit definition thereof set forth in the application and other portions thereof as discussed in paragraph 7. A consistent description throughout the specification should be set forth. Also it is noted that page 27, lines 11-13 does not set forth only a portion of the fibers are required to be more aligned in the extended position than in the relaxed position contrary to Applicant's remarks. With regard to the remarks with respect to Noel and Weirich, such remarks have been considered but are deemed not persuasive in that they are narrower than the claim language as best understood, discussed supra, and the teachings of the prior art which both teach the property of extensibility and tensioning of the nonwoven web. Attention is again invited to the discussion of product by process claims, i.e. patentability is determined upon the structure of the end product, and the specific portions of the references cited, i.e. the prior art is not limited to untensioned embodiments but merely discloses a preference therefor, i.e. different embodiments are recognized by the prior art.


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*Conclusion*

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karin M. Reichle whose telephone number is (571) 272-4936. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Larry Schwartz can be reached on (571) 272-4390. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Karin M. Reichle  
Primary Examiner  
Art Unit 3761

KMR  
February 7, 2005